CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2597

Heard in Montreal, Wednesday, 15 March 1995

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

On September 30, 1994, employees C. McCaw, M. Baynham and T. Bridgeman were denied their right to exercise their seniority as a result of the closure of the Prescott terminal.

UNION'S STATEMENT OF ISSUE:

On September 23, 1994, CanPar announced that it was closing the Prescott terminal and distributing the work between the Kingston and Ottawa terminals. The three grievors notified the proper Company official of their intent to exercise their seniority to positions within the Kingston terminal. The Company denied this request stating that they could only exercise their seniority to the transferred positions and not existing positions with the CanPar terminal.

FOR THE UNION:

(SGD.) D. J. DUNSTER
EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

M. D. Failes	– Counsel, Toronto
P. D. MacLeod	– Director, Terminal, Toronto
J. Cyopek	– President, CEO, Toronto
R. Dupuis	– Regional Manager, Quebec
Wm. Charlton	– District Manager, North-East Ontario

And on behalf of the Union :

H. Caley	– Counsel, Toronto
D. Dunster	– Executive Vice-President - Trucks, Ottawa
J. J. Boyce	– National President, Ottawa

AWARD OF THE ARBITRATOR

The Union alleges that the three employees whose positions were abolished with the closing of the Prescott terminal, and who elected to move to the Kingston terminal, were entitled to displace the junior employee of their choice at Kingston in accordance with article 5.3.2 of the collective agreement which provides as follows:

> **5.3.2** Except as otherwise provided in article 5.3.1, a permanent employee who is unable to hold a position in his local seniority group may displace a junior employee in any of the local seniority groups on his seniority District, if qualified.

In the Union's view the above provision would allow any of the three grievors to choose to displace a specific employee in Kingston, which is within the same seniority district as Prescott, and that they were therefore entitled to step into the route and assignment of such employees.

The Company takes the position that no employee can lay claim to a particular route by means of the displacement provisions of the collective agreement. It submits that article 5.3.2 contemplates employees moving to the "position" of another employee, which in this case merely means holding a job at the Kingston terminal, and not entitlement in respect of any particular route. The Arbitrator is referred, in part, to article 5.2.14 of the collective agreement, dealing with numbered routes, and which provide as follows:

> **5.2.14 NUMBER ROUTES**
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> Regular numbered routes will be established.
>
> Each regular numbered route will be assigned to a Drive Representative, on a continuing basis.
>
> This doe not preclude the Company form making adjustments to routes due to fluctuations of traffic.
>
> An employee removed from his/her regular route will be returned immediately upon re-establishment of said route.
>
> Drivers will be assigned the route they hold on the date of ratification.
>
> The above would not be construed as limiting the ability of an employee to bid in a Driver Representative bulletin.
>
> These bulletins will not be identified by numbered run.

The Company submits that, at most, what the above provision recognizes is that employees do enjoy a degree of stability in their job assignments, to the extent that once assigned to a regular numbered route, an employee is to continue to operate that route, as contemplated in article 5.2.14. This, the Company submits, is different from the right to bid such routes on the basis of seniority, a right which has never existed under the terms of the collective agreement, or the right to displace into such a route, which it maintains also is not contemplated. By way of analogy, Counsel for the Company refers the Arbitrator to the prior award of this Office in **CROA 1995**, where it was found that an employee whose route was abolished could not exercise a right to displace into another route within the same terminal.

In **CROA 1995**, which concerned a slightly different fact situation, the following appears:

> Counsel for the Company explains that this article was added to the agreement in 1986, in response to a request by the Union which sought to obtain for its members who were driver representatives, a certain right of ownership to their routes. He emphasizes, however, that the establishment of numbered routes has no significance for job bulletining purposes. In other words, according to the Company, a route is not a position. The assignment of a route is never bulletined and remains at all times a discretionary decision of the employer, subject only to the terms of Article 5.2.14.
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> The Arbitrator must accept the position of the Company. In light of the terms of Articles 5.3.1 and 5.2.14, it appears clear that the parties agreed not to include the right to a particular route among the rights and obligations which constitute a position. The evidence establishes that since the first Collective Agreement in 1977, the establishment or elimination of a route was never treated as the same as the assignment or abolishment of a position within the terms of Article 5.3.1. That is to say

> that throughout the duration of several collective agreements the application of the terms of Article 5.3.1 conformed to the position of the Company in the instant case and has never been the subject of a grievance. …

The Arbitrator must agree with Counsel for the Company as regards the merits of this dispute. If the position of the Union is correct, employees whose jobs are abolished and who exercise seniority pursuant to article 5.3.2 would, effectively, be able to displace onto a given route, thereby using their seniority to bid a route, rather than another employee's position. That, in my opinion, cannot be a fair interpretation of the intention of the collective agreement, having regard to the fact that employees do not have any primary right to bid routes on the basis of their seniority. On balance, I am satisfied that the reference to an employee displacing a junior employee appearing in article 5.3.2 relates to displacing a junior employee in his or her position. In other words, if, in the case at hand, the three Brockville routes had not been transferred to Kingston, but had merely been abandoned, the three employees at Brockville could exercise their seniority to take the jobs of junior employees in Kingston. What would those jobs involve? The right to work as assigned by the Company, subject only to the requirements of the collective agreement, including the provisions of article 5.2.14 relating to route assignments.

While the Arbitrator can appreciate the motives which underlie the grievance, and the logic of the argument made by Counsel for the Union suggesting that senior employees should have the right to displace the employee of their choice, thereby assuming access to his or her work, the language of the collective agreement, and the history of bargaining between the parties leads to another conclusion. For reasons which they must best appreciate, the parties have never incorporated provisions into their collective agreement which would allow employees to bid on routes on the basis of seniority. That issue remains a contentious difference between them, and in the circumstances, having regard to the history of the collective agreement, and to the principles reflected in **CROA 1995**, I am satisfied that it would require clear and unequivocal language in the terms of the collective agreement to confirm the interpretation now advanced by the Union. Such language is not to be found. In the result, I am compelled to prefer the interpretation of the Company, which is that the grievors were entitled to displace to positions of junior employees at Kingston, but that their rights under article 5.3.2 do not attach to the election of any particular route. To put it differently, there is nothing within the language of article 5.3.2 which derogates from the overriding discretion of the employer to assign routes, and to do so without regard to seniority, subject only to the terms of article 5.2.14 of the collective agreement. In the result, therefore, no violation of the agreement is disclosed.

For the foregoing reasons the grievance must be dismissed.

17 March 1995

(signed) MICHEL G. PICHER
ARBITRATOR